

REMARKS

Reconsideration of the application is respectfully requested in view of the preceding amendments and for the following reasons.

I. Introduction

Claims 1 and 3-19 are currently pending in the present application (misnumbered claims 16-20 have already been renumbered as 15-19 as indicated on page 3 of the Office Action).

II. Claim Objections

The Office Action indicates that the numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution, and therefore misnumbered claims 16-20 have been renumbered 15-19.

III. Rejection of Claims 14, 16-18 under 35 U.S.C. § 102(b)

Claims 14, 16-18 are rejected under 35 U.S.C. § 102(b). The Patent Office has contended that these claims are anticipated by U.S. Patent No. 5,424,085 ("Hsieh et al."). Applicant has canceled claims 14-16 and 18-19 thereby mooting this rejection.

IV. Rejection of Claims 1 and 3-19 under 35 U.S.C. § 103(a)

Claims 1 and 3-19 are rejected under 35 U.S.C. § 103(a). The Patent Office has contended that these claims are unpatentable over U.S. Patent No. 5,424,085 ("Hsieh et al.") in view of U.S. Patent No. 6,207,207 ("Belzowski et al."). It is respectfully submitted that this rejection should be withdrawn in view of the preceding amendment to independent claim 1 and for the following reasons.

The inventive food additive according to amended claim 1 is not anticipated by Hsieh et al. The Hsieh et al. disclosure relates to nuts or seeds which are coated. The coating is formed predominantly of sugar and sweetener syrup. Lecithin is only mentioned as an emulsifier for a separating component (see col. 5, line 15 to 25). The amount of such an emulsifier is limited to a maximum of 2% based on the weight of the seeds or nuts.

Emulsifier lecithin is present preferably only 0.3% based on the weight of the seed. This is an amount which is so small, that it does not produce a noticeable effect.

Sugar and sweeter syrup are very different substances than lecithin and have a different nature than lecithin. A coating composed predominantly of lecithin, as in the present invention, is different from a coating according to the disclosure of Hsieh. A coating formed with lecithin present in an amount greater than about 50% by weight has different characteristics than the known sugar based coatings of Hsieh.

Furthermore, a coating of seeds with a weight greater than the weight of the seed itself is neither disclosed nor suggested by Hsieh or Belzowski et al. (U.S. Patent No. 6,207,207). Independent claim 1 has been amended to distinguish the invention from the cited prior art on this basis. The amendment is supported in the specification at page 5, lines 7-9.

The disclosure of Belzowski is limited to coat a starch based center with a sugar shell. That the starch based formed center may be a grain is mentioned as noted in the margin. All of the examples are directed onto starch based centers which are formed from especially treated products. The treatments may be an extrusion, gun puffing or vacuum oven expansion. The use of lecithin in such a coating is not disclosed by Belzowski.

V. Conclusion

For the preceding reasons, Applicant respectfully submits that the present application is now in condition for allowance.

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Respectfully submitted,

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